IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1829 OF 2006

IN

APPEAL NO. 457 OF 2006

IN

SUIT NO. 339 OF 1991

Miss Thrity Sam Shroff .. Appellant

V/s

Mehroo Meherji Vakil & Ors. .. Respondents

Mr. Rustom Bagalia with Ms.V.S. Jagtap for the Appellant.

Mr.H.J. Thakkar, Senior Advocate with Mrs. Meherji and Mr. Vishal Thakkar i/b Gagrats for Respondents No.1 to 3.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 26th September 2006

P.C. :

1. Heard Mr.Bagalia in support of this notice of motion which is taken out by the Appellant herein. Mr.Thakkar, Senior Advocate, appears for the Respondents.

2. This motion seeks stay of the operation of the judgment dated 5th May 2006 rendered by a Single Judge

in Suit No.339 of 1991. When the Appeal was admitted on 4th August 2006, stay of execution to the extent of eviction of the Appellant had been granted. Inquiry for mesne profit was not stayed. It was directed that the Appellant will not induct any third party in the premises. The Respondents sought time to file reply to the motion to claim appropriate compensation during the pendency and disposal of the Appeal. That was because it was submitted that the stay should be on appropriate terms.

3. Reply has been filed first in July 2006 and one additional affidavit has been affirmed on 9th August 2006. In this affidavit, it is stated that the maintenance charges required to be paid for the entire flat are to the tune of Rs.18,000/- per quarter. Compensation is sought for the occupation of the suit premises by the Appellant. The Appellant has relied upon three different alternative methods. On the basis of ready reckoner, it is submitted that the monthly compensation will have to be at least Rs.79,333/-. Thereafter on the basis of a report known as "Times Property" dated 5th August 2006, compensation is sought at the rate of Rs.1,12,000/- per month. This is however on the footing that the Appellant is occupying half the area of the flat admeasuring around 1400 sq.ft. Lastly, on the basis of valuation given by the valuer known as

DHF Realtors, it is submitted that the compensation in Churchgate area, wherein the building is situated, will be at least Rs.60 to Rs.70/- per sq.ft.

4. Although the total area of the concerned flat is around 2800 sq.ft., the Appellant is in occupation of just around 300 sq.ft. exclusively. It is however the case of the Appellant that half the portion of the entire premises was in occupation of Anklesarias and the Appellant, and the Anklesarias having vacated their portion, it is 1/4th portion which is in occupation of the Appellant. It is true that 300 sq.ft is in exclusive occupation of the Appellant, but she is permitted to use other area and, therefore, it is submitted that it should be taken that the Appellant is using 1/4th of the entire area of the concerned flat. Even if it is to be taken that the Appellant is in exclusive possession of 300 sq.ft. at the rate of Rs.60/- per sq.ft., the monthly compensation will be Rs.18,000/-. The Appellant must also pay appropriate proportion of the maintenance charges and should also clear her proportion of the society charges which have been paid by the Respondents. In the affidavit in reply, the calculations show that the figure comes to over Rs.4,80,000/- and, therefore, it is submitted that the Appellant should at least pay Rs.1,20,000/- towards society charges.

5. Mr.Bagalia, learned counsel appearing for the Appellant, submitted that the Appellant is in occupation of part of the premises as the daughter of one Piloo Shroff and grant daughter of Khorshed Khansaheb, who is the relative of the Appellant. It is the case of the Appellant that though there is a decree on the basis that she is a trespasser, in fact she is not. He points out the ailments from which the Appellant suffers apart from the fact that she does not have occupation of her own and that she is a person of senior age. He therefore submits that the Appellant should not be made to pay any exorbitant amount so as to make her Appeal infructuous.

6. In this connection, we must note the submission of Mr.Thakkar that in certain premises situated at Gowalia Tank, a decree has been passed in favour of the Appellant and she has a share in a flat situated over there. He therefore submits that the Appellant should not be granted any stay, but in the event she succeeds, she can get restitution of the premises.

7. We have noted the submissions of both the counsel. As far as the society charges are concerned, the Appellant will have to pay her share. The arrears comes to around Rs.4,80,000/-. The Appellant will

therefore pay Rs.1,20,000/- towards her share of these arrears. Mr.Bagalia has taken instructions from the Appellant and has sought time of 3 months. Mr.Thakkar has left it to the Court on that part. In the circumstances, as far as these arrears are concerned, the Appellant will clear these arrears in 3 months, i.e. by end of December 2006. She will pay Rs.40,000/- by end of October, November and December 2006 and clear Rs.1,20,000/-.

8. When it comes to monthly compensation, it may be noted that the concerned premises are situated in Churchgate area where the rates of the properties are quite high. At the same time, we cannot ignore that the Appellant has been staying in the premises right since about 1994. She is a distant relative of Respondents No.1 to 3 and a senior person suffering from some serious ailment and does not have occupation of her. At the rate of Rs.60/- per sq.ft., the monthly compensation for the room of 300 sq.ft. will come to around Rs.18,000/-. Yet, considering the above factors, in our view, ends of justice will be met if the Appellant is directed to pay Rs.12,000/- per month towards the compensation. Similarly, as far as the society charges are concerned, the quarterly contribution comes to Rs.18,000/-. The Appellant’s share will be calculated as 1/4th thereof, i.e. Rs.4,500/- for three months.

She may pay this amount either on quarterly basis or monthly basis. Over and above that, the Appellant will have to pay the electricity charges for consumption of power for the room in her occupation.

9. All the arrears as of now as also the amounts payable till the end of December 2006 will be cleared by 10th January 2007. Thereafter the monthly payment for the month of January 2007 onwards will be paid by 10th of subsequent months. The amounts will be paid by cheque in the name of Respondent No.1. These amounts will be payable from 5th May 2006, i.e. the date of the decree.

10. The stay against the execution of the decree will be on the aforesaid terms.

11. Motion granted in the aforesaid terms.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)